

SECOND REGULAR SESSION

# HOUSE BILL NO. 2585

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BARNES.

6546H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 650.058, RSMo, and to enact in lieu thereof one new section relating to revocation of probation or parole for a crime for which a person is determined to be innocent.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 650.058, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.058, to read as follows:

650.058. 1. Notwithstanding the sovereign immunity of the state, any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of DNA profiling analysis may be paid restitution. The individual may receive an amount of fifty dollars per day for each day of postconviction incarceration for the crime for which the individual is determined to be actually innocent. The petition for the payment of said restitution shall be filed with the sentencing court. For the purposes of this section, the term "actually innocent" shall mean:

(1) The individual was convicted of a felony for which a final order of release was entered by the court;

(2) All appeals of the order of release have been exhausted;

(3) The individual was not serving any term of a sentence for any other crime concurrently with the sentence for which he or she is determined to be actually innocent, unless such individual was serving another concurrent sentence because his or her parole was revoked by a court or the board of probation and parole in connection with the crime for which the person has been exonerated. **Regardless of whether any other basis may exist for the revocation of the person's probation or parole at the time of conviction for the crime for which the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **person is later determined to be actually innocent, when the court's or the board of**  
18 **probation and parole's sole stated reason for the revocation in its order is the conviction**  
19 **for the crime for which the person is later determined to be actually innocent, such order**  
20 **shall, for purposes of this section only, be conclusive evidence that their probation or**  
21 **parole was revoked in connection with the crime for which the person has been exonerated;**  
22 and

23 (4) Testing ordered under section 547.035, or testing by the order of any state or federal  
24 court, if such person was exonerated on or before August 28, 2004, or testing ordered under  
25 section 650.055, if such person was or is exonerated after August 28, 2004, demonstrates a  
26 person's innocence of the crime for which the person is in custody.

27

28 Any individual who receives restitution under this section shall be prohibited from seeking any  
29 civil redress from the state, its departments and agencies, or any employee thereof, or any  
30 political subdivision or its employees. This section shall not be construed as a waiver of  
31 sovereign immunity for any purposes other than the restitution provided for herein. The  
32 department of corrections shall determine the aggregate amount of restitution owed during a  
33 fiscal year. If insufficient moneys are appropriated each fiscal year to pay restitution to such  
34 persons, the department shall pay each individual who has received an order awarding restitution  
35 a pro rata share of the amount appropriated. Provided sufficient moneys are appropriated to the  
36 department, the amounts owed to such individual shall be paid on June thirtieth of each  
37 subsequent fiscal year, until such time as the restitution to the individual has been paid in full.  
38 However, no individual awarded restitution under this subsection shall receive more than  
39 thirty-six thousand five hundred dollars during each fiscal year. No interest on unpaid restitution  
40 shall be awarded to the individual. No individual who has been determined by the court to be  
41 actually innocent shall be responsible for the costs of care under section 217.831.

42 2. If the results of the DNA testing confirm the person's guilt, then the person filing for  
43 DNA testing under section 547.035, shall:

44 (1) Be liable for any reasonable costs incurred when conducting the DNA test, including  
45 but not limited to the cost of the test. Such costs shall be determined by the court and shall be  
46 included in the findings of fact and conclusions of law made by the court; and

47 (2) Be sanctioned under the provisions of section 217.262.

48 3. A petition for payment of restitution under this section may only be filed by the  
49 individual determined to be actually innocent or the individual's legal guardian. No claim or  
50 petition for restitution under this section may be filed by the individual's heirs or assigns. An  
51 individual's right to receive restitution under this section is not assignable or otherwise  
52 transferrable. The state's obligation to pay restitution under this section shall cease upon the

53 individual's death. Any beneficiary designation that purports to bequeath, assign, or otherwise  
54 convey the right to receive such restitution shall be void and unenforceable.

55         4. An individual who is determined to be actually innocent of a crime under this chapter  
56 shall automatically be granted an order of expungement from the court in which he or she pled  
57 guilty or was sentenced to expunge from all official records all recordations of his or her arrest,  
58 plea, trial or conviction. Upon granting of the order of expungement, the records and files  
59 maintained in any administrative or court proceeding in an associate or circuit division of the  
60 court shall be confidential and only available to the parties or by order of the court for good cause  
61 shown. The effect of such order shall be to restore such person to the status he or she occupied  
62 prior to such arrest, plea or conviction and as if such event had never taken place. No person as  
63 to whom such order has been entered shall be held thereafter under any provision of any law to  
64 be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite  
65 or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry  
66 made of him or her for any purpose whatsoever and no such inquiry shall be made for  
67 information relating to an expungement under this section.

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